THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date: 10-07-2006

WRIT PETITION No. 8255 OF 1999

BETWEEN:
M/S. Sri Murugan Motors Works, Visakhapatnam, represented by its Proprietor K.Vijayan S/o K.P.Kuttain, Hindu, Male, aged about 47 years, Resapuvanipalem, Visakhapatnam.

…Petitioner

And

1. K.Apparao S/o Late K.Rama Swamy by Steel City Consumers Association, rep.by its Legal Secretary, Sri A.V.C.N.Nageswara Rao, D.No.29.2.24, Opp: Dist.Court, Prakasaraopeta, Vasakhapatnam.

2. M/s.Sampath Vinayak Automobiles, represented by its Proprietor, Opp: Petrol Bunk, Main Road, Near Gurudwar, Visakhapatnam.

3. A.P.State Consumer Dispute Redressal Commission, Hyderabad.

…Respondents

ORDER:

The petitioner herein is the opposite party No.2 in a complaint filed by the first respondent herein and the second respondent herein is the opposite party No.1 in Consumer Case No.841 of 1992 on the file of the District Consumer Forum, Visakhapatnam.

This writ petition has been dismissed against the second respondent for default, as the petitioner failed to pay batta due with the petition and failed to furnish detailed address of respondent No.2.

The first respondent herein filed a complaint before the District Consumer Forum, Visakhapatnam, alleging that the second respondent herein came to him along with one Mr.Kutti who was working in the garage of the petitioner and taken away his car for tinkering purpose on 20-7-1991 on the total tinkering charges of Rs.3,000/- and the complainant paid an amount of Rs.1,000/- towards advance to the first opposite party. The second respondent herein and said Kutti have

signed and passed the receipt. Another sum of Rs.1,000/- was taken on 28-9-1991, but the petitioner herein failed to deliver the car by carrying out the tinkering work. The complainant gave a police complaint and thereafter, he filed the consumer case, claiming compensation for deficiency of service and also claimed damages.

The petitioner herein filed a counter before the District Consumer Forum, Visakhapatnam, denying all the allegations made in the complaint and stated that he has not taken the vehicle on 20-7-1991 for tinkering purpose, but the vehicle was kept for security in his shed alone and the petitioner herein has not entered into any agreement with the complainant. The second respondent herein who is the first opposite party also filed a counter.

After considering the pleadings and the affidavits filed by the complainant and first opposite party, the District Consumer Forum, Visakhapatnam, came to the conclusion that the said Kutti was working with the petitioner herein and the contention of the petitioner and second respondent that no amount was received and no receipt passed was disagreed and the receipts dated 20-7-1991 and 28-9-1991 passed by the second respondent herein and Mr.Kutti who was said to have been working with the petitioner concern and agreed to deliver the car was believed as the said allegations have not been denied by the opposite parties.

The District Consumer Forum also noticed about the filing of counter by the petitioner which was not at all signed and no verification certificate appended , but it was signed by the Advocate only.

It is also pertinent to note that the petitioner herein did not even file the evidence affidavit in the consumer case and after considering the rival contentions, the District Consumer Forum came to the conclusion that both the petitioner and the second respondent herein taken away the car for tinkering purpose and received a sum of Rs.2,000/- and the car was not returned and therefore, they were directed to pay a sum of Rs.15,000/- to the complainant being the cost of the car and also further directed to pay Rs.1,000/- towards costs of the proceedings and pay another sum of Rs.1,000/- towards compensation, within two months from the date of order, failing which, they have to pay interest at the rate of 15% per annum, by order dated 3-2-1998.

Aggrieved by the said order, the petitioner herein filed an appeal along with an application to condone the delay of 134 days on the file of the State Consumer Disputes Redressal Commission, Hyderabad. The said application filed in FA.I.A.No.779 of 1998 in F.A.SR.No.2016 of 1998 was dismissed. But, however, the State Commission exercised suo-motu revisional powers in R.P.No.14 of 1999 against the order of the District Consumer Forum in C.C.No.841 of 1992

and dismissed the revision petition, holding that there is no illegality or irregularity in the order of the District Consumer Forum warranting interference under Section 17(b) of the Consumer Protection Act, 1986, by order dated 17-2-1999.

As the order of the District Consumer Forum was not complied with, the complainant filed Penalties Petition No.27 of 1998 in C.C.No.841 of 1992 for sentencing the petitioner herein to undergo civil imprisonment and the said petition was allowed on 1-9-1998 sentencing the petitioner herein to undergo imprisonment for a period of six months and also to pay a fine of Rs.1,500/- for not complying the order dated 3-2-1998 passed by the District Forum, Visakhapatnam in C.C.No.841 of 1992. Against the said order, the petitioner filed R.P.No.183 of 1998 on the file of the State Consumer Disputes Redressal Commission, Hyderabad. The said revision was partly allowed, modifying the sentence of imprisonment of six months to that of fine of Rs.1,000/-, in default to undergo imprisonment for two weeks, subject to the condition that the petitioner herein shall pay a sum of Rs.1,600/- being interest amount payable at the rate of 15% per annum on Rs.17,000/- from 3-2-1998 to 17-9-1998 within a period of two weeks from the date of said order and also additional fine of Rs.1,000/- by 24-3-1999. Aggrieved by both the above orders, this writ petition has been filed.

Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the first respondent.

It is the contention of the petitioner that there is no privity of contract between the petitioner and first respondent and the first respondent never gave his car for tinkering purpose to the petitioner and the petitioner do not know the said Kutti and there was a collusion between the petitioner and the second respondent. In fact, the Advocate of the petitioner when reported no instructions before the District Consumer Forum, the District Consumer Forum ought to have issued a notice to the petitioner, but without issuing any notice and without hearing the petitioner, the District Consumer Forum passed the said order.

In support of his contention, the petitioner relied on the Judgment of the Supreme Court in the case of **Malkiat Singh and another Vs. Joginder Singh and others**[1]**.** In the said case, when the counsel for the defendant reported no instructions, the defendant was set exparte on 18-11-1991and exparte decree was passed on 8-2-1992. Thereafter, the defendant engaged another counsel and on 10-6-1992 he filed an application under Order 9 Rule 13 of Civil Procedure Code for setting aside the order dated 18-11-1991 and exparte judgment and decree dated 8-2-1992. The same was dismissed by the trial Court. The District Judge

confirmed the said order and the High Court also confirmed the said order by dismissing the revision.

The Supreme Court while considering the case of the defendant in that case observed that the defendant was neither careless nor negligent in defending the suit. The defendant engaged the counsel for following the proceedings and when the Advocate reported no instructions, the Court ought to have given notice to the defendant and in those circumstances, the exparte order was set aside the matter was remanded to the trial Court.

In the instant case, the petitioner was not at all set exparte by the District Consumer Forum. The District Consumer Forum as well as the State Commission observed that the petitioner has not evinced any interest and the Advocate filed the counter without any verification certificate and signature of the petitioner and the counter was signed by the Advocate only. The petitioner did not even file the evidence affidavit in the case and therefore, the District Consumer Forum considered the case on merits and passed order on merits, but the petitioner was not at all set exparte and it was not an exparte order. Therefore, I am of the opinion that the Judgment of the Apex Court has no application to the facts of the present case.

It is to be noted that the State Commission noticed that when the order of the District Consumer Forum was not

complied with, the complainant filed P.P.No.27 of 1998 under Section 27 of the Act and against the order passed in P.P.No.27 of 1998, the petitioner filed R.P.No.183 of 1998 and the in the said revision it is observed that

> **"We find that even before the District Forum, after receiving notice and engaging Mr.Md.Habibullah as his counsel, he did not bother to file version/counter signed by himself counter signed by the Advocate only was filed without any verification of the petitioner. The Advocate also reported no instructions. No affidavit evidence of the petitioner was also filed in support of his case before the District Forum. It was in fact because of that that the District Forum allowed the complaint on the basis of the material on record and affidavit evidence filed by the defacto complainant, Sri K.Appa Rao, and the affidavit evidence of the 1st opposite party. We also find that the complainant presented P.P.No.27/1998 in CC.No.841/1992 under Section 27 of the Consumer Protection Act, 1986 ('the Act' for short) on 23-5-1998 itself complaining that the opposite parties in the CC had not complied with the order of the District Forum dt.3.2.1998. Thereafter notice in that PP was served on the petitioner on 2.7.1998. He engaged the very same counsel Mr.Md.Habibullah and filed vakalat on 14-7-1998 in that PP.No.27/1998. It was only thereafter that he preferred appeal, FA.SR.No.2016/1998 on 17.7.1998. In the circumstances, we do not find that any credence can be given to the reasons for the delay in presenting the appeal. We therefore do not find any sufficient cause made out for condoning the delay in presenting the appeal".**

It is evident from the above finding that the counsel who said to have been reported no instructions, appeared again in the same proceedings when an application has been filed in P.P.No.27 of 1998 in CC.No.841 of 1992 by filing vakalat. Therefore, it may not be just and proper to blame the

Advocate and the petitioner alone has to be blamed for his negligence and not pursuing the matter before the District Forum properly.

Though sufficient opportunity has been afforded to the petitioner, he failed to avail the opportunity before the District Consumer Forum and the allegations made in the complaint have not been rebutted. Therefore, there was no other go for the District Consumer Forum to appreciate the contentions averred in evidence affidavits and pass the said order.

In view of the aforesaid facts and circumstances of the case, I do not see any infirmity or irregularity in the orders passed by the State Consumer Disputes Redressal Commission and the Commission considered all the contentions of the petitioner and passed a reasoned order.

Therefore writ petition is devoid of merits and accordingly dismissed. No order as to costs.

V.ESWARAIAH, J

Date: 10-07-2006.

Shr.

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[1] (1998) 2 Supreme Court Cases 206.